

## **REMARKS**

Claims 1-6 and 8, 10 remain in the application. Claim 9 having been canceled.

### **A. 35 U.S.C. § 112 first paragraph**

Claims 1-6, 8 and 10 have been rejected under section 112, first paragraph. “The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in the applicants a description of the invention defined by the claims” (MPEP § 2163.04). The examiner does not cite authority as to why the examiner believes an ethoxylate ether is either an ethoxylate ester or an ethoxide ether. Since applicants respectfully disagree with the examiner’s understanding of an ethoxylate, applicants respectfully request the examiner provide authority to support examiners belief to a preponderance of evidence standard.

### **B. 35 U.S.C. § 112 second paragraph**

Again, as stated above, the examiner does not cite authority as to why the examiner believes an ethoxylate ether is either an ethoxylate ester or an ethoxide ether. Applicants respectfully request the examiner provide authority to support examiners belief to a preponderance of evidence standard regarding claims 1-6, 8 and 10.

### **C. 35 U.S.C. § 103**

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must

both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claims 1-6, 8 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wang in view of Kato and further Fukugaku (Office Action, page 4). The Office contends (to which Applicants do not concede) that it would have been obvious to use the slurry of Wang with the surfactants of Fukugaku. However, "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Neither Wang, Kato nor Fukugaku teach or even suggest all of the limitations (for example, ethoxylate ether) of claim 1, thus, claim 1 is not rendered obvious by Wang, Kato or Fukugaku. Because the dependent claims are not obvious for at least the same reasons as the independent claims from which they depend, the dependent claim rejections will not be addressed at this time. Thus, reconsideration and withdrawal of the Section 103(a) rejection of claims 1-6 and 8, 10 is respectfully requested.

In view of the foregoing remarks, the Applicants request allowance of the application. Please forward further communications to the address of record. If the Examiner needs to contact the below-signed Attorney to further the prosecution of the application, the contact number is (480) 715-5488.

Respectfully submitted,

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